

**UNITED STATES DISTRICT
COURT DISTRICT OF ARIZONA**

IN RE: BARD IVC FILTER

)

MDL NO. 2641

PRODUCTS LIABILITY LITIGATION

)

JUDGE DAVID G. CAMPBELL

)

)

)

)

)

)

This Document Relates to:

Cox v. C.R. BARD, INC., et al.

Civil Action No. 2:16-cv-03404-DGC

MOTION TO SUBSTITUTE PARTY AND AMEND COMPLAINT

Counsel for Plaintiffs Elihu Cox and Bobbie Cox respectfully move this court to substitute Bobbie Cox, the Paternal Mother, as the Personal Representative for the Estate of Elihu Cox, Deceased, pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, and to file an Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2).

1. Plaintiff Elihu Cox's case was filed on or about October 6, 2016 (*Cox v. C.R. BARD, INC., et al.*; Case No. 2:16-cv-03404-DGC).

2. All active Defendants have been served with process pursuant to Second Amended Case Management Order No. 4 (CMO 4).

- a. On or about November 22, 2016, Defendant C.R. Bard, Inc., was served by the Court's electronic filing system with the Complaint and Request for waiver of service.
- b. On or about November 22, 2016, Defendants Bard Peripheral Vascular Inc., was served by the Court's electronic filing system with the Complaint and Request for waiver of service.

3. On or about January 1, 2017, Plaintiffs' counsel was informed that Elihu Cox passed away on or about December 29, 2016.

4. Elihu Cox's action against Defendants survives his death and is not extinguished.

5. Plaintiffs' counsel filed the Notice and Suggestion of Death on or about May 4, 2018 [Doc. 10948].

6. On or about March 17, 2017, City of Pedro, Ohio named Bobbie Cox as the informant of decedent the Personal Representative for the Estate of Elihu Cox.

7. Plaintiff thus moves to substitute Bobbie Cox, as Personal Representative for the Estate of Elihu Cox, Deceased, as Plaintiff in the present action.

8. Additionally, Counsel seeks to amend the Complaint, as well as the caption of the Complaint to correct the proper Plaintiffs (specifically Bobbie Cox, as Personal Representative for the Estate of Elihu Cox, Deceased) and to update and include information, allegations and actions within the Complaint to reflect that Plaintiff Elihu Cox is now deceased.

9. Pursuant to Federal Rules of Civil Procedure 15(a)(2) a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

WHEREFORE, Counsel for Plaintiffs, Elihu Cox and Elihu Cox, respectfully request the Court grant Plaintiffs' Motion to Substitute Bobbie Cox, as Personal Representative for the Estate of Elihu Cox, Deceased, and to grant leave to file the Amended Complaint and directing the Clerk of the Court to enter the Amended Complaint, attached hereto, into the record of this matter.

Dated: May 4, 2018

Respectfully submitted,

By: /s/ Monte Bond

MONTE BOND, Esq.
Texas Bar No.02585625
Tautfest Bond PLLC
5151 Belt Line Road, Suite 1000
Dallas, Texas 75254
214-617-9980 (Phone)
214-617-9985 (Fax)
mbond@tautfestbond.com

ATTORNEY FOR PLAINTIFF(S)

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

Dated: May 4, 2018

Respectfully submitted,

/s/ Monte Bond

Monte Bond, Esq.
Texas Bar No. 02585625
Tautfest Bond PLLC
5151 Belt Line Rd.
Ste. 1000
Dallas, Texas 75254
214-617-9980 (Phone)
214-853-4281 (Fax)
mbond@tautfestbond.com

Attorney for the Plaintiffs